IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 19 of 1999

in

COMPANY PETITIONNo 87 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVYA PRINTS PRIVATE LIMITED.

Versus

SESA SEAT INFORMATION SYSTEMS

Appearance:

MR VK BHATT WITH MS BANNA S DUTTA for Petitioner
MR NAVIN K PAHWA for Respondent No. 1
OFFICIAL LIQUIDATOR for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE C.K.BUCH

Date of decision: 28/02/2000

ORAL JUDGEMENT(Per J.N.Bhatt, J.)

Admit. Service of notice is waived by Mr V.K.Bhatt for respondent No.1 and the Official Liquidator for respondent No.2. Upon joint request and considering the facts and circumstances, the appeal is taken up today itself for final disposal.

By invoking the aids of the provisions of section 483 of the Companies Act, 1956, the appellant-original opponent has challenged the winding up order recorded in Company Petition No.87/95, dated, 25.6.99, whereby, the appellant Company, Divya Prints Pvt. Ltd. was ordered to be wound up and the Official Liquidator was appointed to be in charge of the Company.

Learned advocate Mr Pahwa appearing for the respondent, original petitioning Company, submitted that the appellant has, already, paid the dues of the petitioning company. He, therefore, sought permission to withdraw the Company Petition No.87/95, wherein, the impugned order of winding up of the appellant Company has been recorded on 25.6.99. Learned advocate Mr Bhatt, appearing for the appellant Company has no objection. The Official Liquidator has pointed out that the possession of the Company could not be taken as there was an order of the Court staying the winding up order.

Following aspects have remained uncontroverted, as there is consensus about them:

(1) The appellant Company is doing processing house work and it is an ongoing concern.

(2) There are about 125 workers/employees working in the Company.

(3) As per the record of the Company, in general and as per the profit and loss account as on 31st March, 1997, the amount due to sundry creditors is Rs.115 lacs, whereas, the amount due from sundry debtors is Rs.119 lacs.

(4) The assets of the Company as per the record is Rs.4,11,16,853/-, whereas, the net assets came to Rs.2,82,20,838/-.

(5) The impugned winding up order is based on the inability to pay debts under clause (e) of

section 433 of the Companies Act. Upon public advertisement, pursuant to the directions of the learned Company Judge, after admitting the petition, no creditor had come forward and no grievance is also made before the Company Court.

(6) The current assets concerning of inventories came to Rs.2,51,31,944/-.

(7) The appellant Company is a private limited company having, mainly, family members as shareholders.

(8) The Official Liquidator has not been able to take possession of the Company and, therefore, no further follow up action was taken, as stated by the Official Liquidator.

The aforesaid aspects have been articulated and highlighted with a view to appreciate the merits of the request for permission to withdraw the original Company Petition for winding up, upon settlement.

Rule 6 of the Companies (Court) Rules, 1959, clearly, provides that, for the practice and procedure of the Company Court, the provisions of Code shall apply. Rule 100 provides for application for leave to withdraw the petition. A petition for winding up cannot be withdrawn after the presentation of it without the leave of the Court. An application for leave to withdraw a petition for winding up, which has been advertised in accordance with the provisions of Rule 99 cannot be heard any time before the date fixed in the advertisement for the hearing of the petition. It could, therefore, very well, be visualised that under the Rules, two embargoes are injected when the Company Court is to entertain an application for leave to withdraw the petition for winding up. Admittedly, the provisions of sub-rule (2) of Rule 100 would not be attracted, at this stage, as the said stage had gone long before.

A petition for winding up is in, real sense, representative in nature. It is in this context, statutory mandate is engrafted in Rule 100 that such winding up petition shall not be withdrawn without the leave of the Court. Therefore, the leave of this Court is sought to permit the original petitioner to withdraw the petition as there has been a settlement between the parties.

Obviously, rule 100 (1) of the Rules contemplates that

leave of the Court is a condition precedent for the purpose of withdrawal of the winding up petition. In order to ascertain as to whether there is a fit and appropriate case for granting leave to withdraw the winding up petition, the Court is obliged to consider various aspects and facets and it is in this context, the aforesaid material aspects have been highlighted from the record.

The Court has to exercise its discretion bearing in mind not only the interest of the parties seeking withdrawal of the petition or the parties who have settled their controversy, but, the overall interest, including the public good. The discretion has to be exercised so as to advance not only the interest of the parties, but the public interest. If the public interest is in conflict with the interest of the parties, leave could be refused.

It would be appropriate, at this stage, to peep into the provisions of Order 23 Rule 1 which provides that at any time after the institution of a suit, the plaintiff may, as against all or any of the defendants, abandon his suit or abandon part of his claim and where the Court is satisfied that there are sufficient grounds for allowing the plaintiff to abandon any suit or part of the claim or withdraw from suit or part of the claim without permission referred to in sub-rule (3) of Rule 1 of Order 23. Though, directly, the provisions of Order 23 rule 3 may not be attracted, but the underlying purpose and design has to be borne in mind while entertaining the merits of withdrawal of the application under Rule 100 of the Company (Court) Rules.

In our opinion, in the light of the peculiar facts and the special circumstances narrated hereinbefore and emerging from the record of the present case, in general, and the company being an ongoing concern with 125 workers, having process house business work with fixed and working assets, and the inventory report of the Official Liquidator, dated July 30, 1999, there is a fit and appropriate case to accord leave to withdraw the winding up petition with following safeguards:

(1) The appellant company shall give public advertisement in the same newspapers in which earlier advertisements were given on or before 15th March, 2000, about the settlements and the grant of leave for withdrawal of the winding up petition.

(2) It shall also report to the Registrar of

Companies on or before 30th March, 2000.

(3) The authorised Officer of the Company shall file an affidavit before the Registrar of this Court about the compliance of the two conditions on or before 31st March, 2000, failing which, the Office shall place this matter for further orders.

In view of the aforesaid facts and circumstances and the directions, leave to withdraw the winding up petition is granted. Accordingly, this appeal and the main petition shall stand disposed of. No order as to costs.

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